

# INDIANA BASIC PROPERTY INSURANCE UNDERWRITING ASSOCIATION

## (INDIANA "F.A.I.R." PLAN)

The following Indiana Basic Property Insurance Underwriting Association program (Indiana F.A.I.R. Plan) (hereinafter referred to as the "Plan" or "Plan of Operation") is hereby adopted as amended by the Association and its members for the purpose of making property insurance available to applicants who have been unable to secure such insurance on insurable property within the State of Indiana through the admitted insurance market.

To administer the Plan, an organization has been formed, known as the Indiana Basic Property Insurance Underwriting Association, an association of insurance companies authorized to do business in Indiana (the "Association"). Each insurance company that is or becomes a member of the Association hereby declares its acceptance of the Plan and its membership in the Association, and agrees to be subject to the By-Laws of the Association as amended from time to time by the Committee of the Association.

### SECTION I PURPOSES OF THE PLAN

The purposes of the Plan are:

- (1) To encourage:
  - (a) stability in the property insurance market for properties located in the State of Indiana,
  - (b) maximum use of the facilities of the admitted insurance market, with the least possible administrative expense and detail, in providing basic property insurance as defined in the Plan,
  - (c) improvement of properties and orderly community development;
- (2) To provide for the formation and administration by the Association of a plan establishing fair access to insurance requirements, in order that:
  - (a) no applicant shall be denied basic property insurance except after a physical inspection of the property and a fair evaluation of its individual underwriting characteristics,
  - (b) property insurers shall share equitably the responsibility for providing basic property insurance on insurable property for which such insurance cannot be obtained in the admitted insurance market,

- (3) To issue policies or certificates of insurance on behalf of all Insurers on property located in Indiana in accordance with the Plan of Operation,
- (4) To assume and cede reinsurance on behalf of Insurers in accordance with the Plan of Operation, and
- (5) To publicize the purposes and procedures of the Plan to the end that no one may fail to seek its assistance through ignorance thereof.

## SECTION II EFFECTIVE DATE

The Plan was effective October 28, 1968. The Plan was amended effective July 1, 1996 and August 15, 2003 and is amended as set forth in this document effective November 1, 2003.

## SECTION III DEFINITIONS

For the purposes of the Plan, all terms and phrases as defined in the By-Laws of the Association shall have the meanings as set forth therein, and the following terms and phrases shall have the meanings as set forth hereafter:

- (1) “Basic Property Insurance” means the coverage against direct loss to real and tangible personal property having economic value, at a fixed location, which is provided in the Standard Fire Policy, and Extended Coverage Endorsement (including builders’ risk coverage), crime, personal liability and habitational earthquake coverage and such other classes of insurance as may be added to the Plan by amendment as hereinafter provided. Basic Property Insurance does not include automobile, farm or manufacturing risks, nor any Replacement Cost or All Risk of Physical Loss Coverage.
- (2) “Premiums Written” means gross direct premiums charged (excluding that portion of premium on risks ceded to the Association and premiums for federally reinsured flood insurance) during the latest available calendar year as determined by the Association, with respect to property in the State of Indiana, on all policies of Basic Property Insurance and the Basic Property Insurance components of all multi-peril policies, as computed by the Association, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits.
- (3) “Habitational” means Basic Property Insurance included under the ISO Personal Lines Statistical Plan.
- (4) “Commercial” means Basic Property Insurance not included under the ISO Personal Lines Statistical Plan.

- (5) “Farm Outbuilding” means outbuildings located on a farm, and as further described in the FAIR Plan Underwriting Guidelines. The exclusions for “farms” in section III(1) shall not prohibit the Plan from issuing policies for coverage against physical loss on covered Farm Outbuildings.

#### SECTION IV MEMBERSHIP

(1) Membership. Any insurance company or other organization licensed to write and engaged in writing property insurance (including the property insurance components of multi-peril policies) on a direct basis in the State of Indiana may become a member of the Association by applying to the Association for membership. Upon receipt of such membership application and upon notification of such receipt to the applicant, such applicant shall execute a membership agreement in the form as prescribed by the Association and thereafter such applicant shall be an Insurer entitled to the rights and subject to the obligations of an Insurer as set forth herein and in the By-Laws of the Association and in any other documents of the Association.

The Association shall deliver a copy of the By-Laws and the Plan of Operation to an Insurer upon request.

(2) Termination of Membership. Membership of any Insurer shall terminate when such Insurer is no longer licensed to write basic property insurance in the State of Indiana, or at the election of such Insurer, by a written notice to the Association at least sixty (60) days prior to the end of any quarterly accounting period of the Association, with such termination being effective only at the end of such quarterly accounting period. Any Insurer whose membership in the Association is terminated, shall, nevertheless, continue to be governed and bound by this Plan, the By-Laws and any other applicable rules of the Association in order to complete its obligations with regard to any assessments, losses, expenses, obligations or contracts incurred or issued under the Plan during the time the Insurer is a member. When an Insurer has been merged or consolidates into another such insurer, such Insurer or its successor in interest shall remain liable for all obligations hereunder and shall continue to participate in the Association based upon the premiums written by the other insurer with which it has been merged or consolidated. Should any Insurer become insolvent, its membership in the Association shall immediately end and its existing rights as a member shall be resolved in the manner set out in the Plan.

(3) Existing Membership Agreements. Upon the effective date as defined in Section II of the Plan, all Insurer membership agreements, to the extent inconsistent with the Plan or the By-Laws of the Association, are deemed to be amended to be consistent and conform with the Plan and the By-Laws of the Association as amended as of the effective date.

SECTION V  
APPLICATION FOR COVERAGE UNDER THE PLAN

Any person having an insurable interest in real or tangible personal property at a fixed location in Indiana shall be entitled, upon proper application therefore to the Association, to receive a premium quotation for coverage under the Plan. Any such person shall contact an agent licensed to sell property insurance in the State of Indiana to assist him in requesting such premium quotation. The premium quotation shall be free of charge to the applicant's agent.

SECTION VI  
UNDERWRITING AND PLACEMENT

- (1) The Association, upon receipt of an application for insurance, shall examine the risk to determine if the risk meets reasonable underwriting standards. Reasonable underwriting standards shall include but not be limited to the following:
  - (a) physical condition of the property, such as its construction, heating, wiring, evidence of previous fires or general deterioration;
  - (b) its present use or housekeeping, such as vacancy, overcrowding, storage of rubbish or flammable materials;
  - (c) other specific characteristics of ownership, condition, occupancy or maintenance which are violative of public policy and/or result in increased exposure to loss;
  - (d) a risk shall not be declined for neighborhood or area location or any environmental hazard beyond the control of the property owner; and
  - (e) the risk must have been declined by at least three non-related companies which write property insurance in the State of Indiana.
- (2) If the risk fails to meet reasonable underwriting standards, the Association shall so notify the applicant's agent.
- (3) In the event the risk is conditionally declined because the property does not meet reasonable underwriting standards but can be improved to meet such standards, the Association shall promptly advise the applicant's agent as to what improvements should be made to the property to render it acceptable for coverage. Upon completion of the improvements by the applicant or property owner, the Association, when so notified, will reinspect the property.
- (4) The Association shall be responsible for filing all rates and forms applicable to insurance written under the Plan with the Indiana Department of Insurance.

- (5) Limits of all property coverage shall not exceed \$250,000 on any Habitational property and \$1,000,000 on any Commercial property. The specified separate limits for all insured real property shall not exceed its market value exclusive of land. Liability Insurance will be provided only for habitational, owner occupied 1-2 family risks meeting underwriting criteria in an amount of \$100,000 minimum/maximum; Medical Payment of \$1,000. Such risks may also acquire theft coverage minimum \$1,000/maximum \$10,000. Habitational earthquake coverage is also available. Commercial Crime coverage is offered for risks meeting underwriting criteria for limits of \$15,000 maximum per form.

## SECTION VII SYNDICATION POLICY

(1) The Association is authorized on behalf of its Insurers to issue policies or certificates of insurance on property in such form that each Insurer shall be a direct Insurer thereunder in such proportion as it participates in the writings, expenses, profits, and losses of the Association. Liability of each Insurer shall be several, each for itself, and not joint, and no Insurer shall be liable under such policy or certificate for the liability of any other member thereunder, except as provided in Section XV of the Plan of Operation or the By-Laws.

(2) Insurers shall be deemed to have authorized the Manager of the Association to act as attorney-in-fact for all Insurers to execute policies on behalf of the Insurers. Any policy or certificate issued pursuant to this Article may be executed on behalf of the Insurers by such attorney-in-fact appointed hereunder. Where authorized by the Committee, the Association shall pay, on behalf of such Insurers, premium and other taxes related to Association business on terms and conditions agreeable to the taxing authority involved. In the event of death, resignation or incapacity of said attorney-in-fact, the Committee shall nominate and appoint a successor attorney-in-fact. No policy or certificate of insurance shall be affected or invalidated by any change of the attorney-in-fact who, at the time such policy or certificate or insurance was issued, shall have duly acted pursuant to the powers then vested in them.

## SECTION VIII INSURER PARTICIPATION IN EXPENSES, LOSSES AND ASSESSMENTS

(1) Each Insurer shall participate in the profits and be liable for the expenses and losses of the Association and the Plan in the following manner:

- (a) for Habitational risks, the same proportion as its Habitational Premiums Written bear to the aggregate Habitational Premiums Written by all Insurers:
- (b) for Commercial risks, the same proportion as its Commercial Premiums Written bears to the aggregate Commercial Premiums Written by all Insurers.

Such proportions shall be determined on the premiums written in the prior calendar year.

(2) The Committee is authorized to make a current assessment upon all Insurers and such further assessments as may be deemed necessary by the Committee in its sole discretion to provide for the expenses and losses incurred by the Association in administering the Plan. The Committee is also authorized to set a schedule by which Insurers are to pay the Association each Insurer's allocation of any expenses and losses.

#### SECTION IX STANDARD POLICY COVERAGE

All policies issued shall be for Basic Property Insurance on standard policy forms and shall be issued for a term of one (1) year.

#### SECTION X CANCELLATION

- (1) A policy issued by the Association on behalf of the Insurers shall not be canceled, subject to the laws of Indiana and any filings applicable thereto, except:
- (a) for cause which would have been grounds for non-acceptance of the risk under the Plan had such cause been known at the time of acceptance; or
  - (b) for non-payment of premium; or
  - (c) for evidence of incendiarism; or
  - (d) on a finding on the basis of satisfactory evidence that changes in the physical condition of the property or other changed conditions make the risk uninsurable; or
  - (e) for items listed in the Association's filed Non-Renewal, Reduction of Coverage and/or Cancellation Notice.
- (2) Notice of cancellation shall be sent to the insured, any lienholder and the insured's agent.

(3) Any cancellation notice to the insured shall be accompanied by a statement that the insured has a right to appeal as hereinafter provided.

#### SECTION XI RIGHT OF APPEAL

Any applicant for insurance and any person insured under the Plan or any affected Insurer may appeal to the Committee for any action or failure to act by the Association under the Plan. Any decision of the Committee may be further appealed to the Commissioner within thirty (30) days after final action by the Committee. Appeal to the Commissioner shall be governed by the provisions the Indiana Administrative Adjudication Act (I.C. 4-21.5-5) and/or other applicable Indiana law.

SECTION XII  
COMMISSION

(1) Commission to the licensed agent or broker designated by the applicant shall be ten percent (10%).

(2) In the event of cancellation of a policy, or if an endorsement is issued which requires a premium to be returned to the insured, the agent or broker shall refund to the Association the unearned commission.

SECTION XIII  
COMMITTEE

The Committee, as established in the Association's By-Laws, shall be responsible for the administration of the Plan and may approve and establish such manuals, guidelines, rules, and procedures as may be necessary to carry out the purposes of the Plan.

SECTION XIV  
PUBLIC EDUCATION

All Insurers agree to undertake a continuing public education program, in cooperation with producers and others, to assure that the Plan receives adequate public attention.

SECTION XV  
INSOLVENCY

(1) In the event any Insurer fails, by reason of Insolvency, to pay its proportion of any expense or loss incurred by the Association under the Plan of Operation, such unpaid loss or expense shall be paid by the remaining Insurers, each contributing in the manner provided for the distribution of expenses and losses under Section VII of the Plan of Operation or the applicable provisions in the By-Laws, deleting therefrom the participation of the defaulting Insurer. The Association shall be subrogated to the rights of the remaining Insurers in any liquidation proceeding and shall have full authority on their behalf to exercise such rights in any action or proceeding.

(2) The expenses incurred by the Association in such action or proceeding as referenced in part (1) of this Section shall be chargeable, subject to the approval of the court, against the insolvent Insurer as part of the expense of conservation or liquidation to the extent of a pro-rata share of the benefit which may accrue to such Insurer solely as a result of the defense undertaken by the Association.

SECTION XVI  
TERMINATION AND AMENDMENT OF THE PLAN

(1) The Plan shall terminate on the later of the effective date of any legislation on this subject which creates a similar plan, on a date established by a vote of the Insurers or as set forth in Section 2 below. Notwithstanding the foregoing, any obligations incurred by the Association on behalf of Insurers shall not be impaired by termination of the Plan and the Association shall be continued for the purposes of performing and completing such obligations.

(2) In the event participation by insurance companies or other organizations licensed to write and engage in writing property insurance on a direct basis in the State of Indiana as members of the Association should fall below seventy-five (75%), the Committee is authorized to seek the approval of the Commissioner to dissolve the Association.

(3) The Plan may be amended only by a vote of the Insurers as set forth in the By-Laws of the Association.

This Plan of Operation has been duly adopted by the vote of the Insurers on the 21st day of October, 2003.

---

Janis B. Funk, Manager